

REMARKS

Request for Reconsideration

Applicant has carefully considered the matters raised by the Examiner in the outstanding Office Action but remains of the opinion that patentable subject matter is present. Applicant respectfully requests reconsideration of the Examiner's position based on the above amendments to the Specification, Amendments to the Claims, the attached Declaration and the following remarks.

Claim Status

Claims 1-10 had been examined. By way of this Amendment, Claim 10 has been cancelled and Claims 11 and 12 presented. Thus, Claims 1-9, 11 and 12 are under examination.

New Claims 11 and 12

Claims 11 and 12 finds support in old Claim 10, the disclosure in the first paragraph on page 25, the second paragraph on page 3, the first paragraph on page 4 and the

paragraph bridging pages 4 and 5. Respectfully, no new matter has been added.

Specification Amendments

Attached hereto is a Declaration of the Inventor wherein he attests to the fact that the second paragraph on page 3, the first paragraph on page 4 and the paragraph bridging pages 4 and 5 are his work which is not in the public domain. Therefore, these three paragraphs have been moved from the section entitled "Art Related to the Invention" to the section of the Application entitled "Detailed Description of the Invention" and, specifically, to page 25.

It is submitted that such is proper given the fact that the subject matter in these three paragraphs is not the work of another but, rather, the work of the Inventor, himself. It is well recognized that the work of the Inventor is not prior art absent some statutory basis. See Riverwood International Corp. v. R. A. Jones & Co., 66 USPQ 2nd 1331 (Fed. Cir. 2003). As stated in Mr. Jacob's Declaration, he states that he has not disclosed this work to anyone else and, thus, it is submitted that there is no

statutory basis on which to rely for citing that these three paragraphs are prior art.

Furthermore, the Court has already addressed the fact when work of the inventor happens to wrongly appear in the "Prior Art" section of the Patent, such is not an admission, see Reading & Bates Construction Co. v. Bates Energy Resources Corp., 223 USPQ 1168 (Fed. Cir. 1984). Respectfully, amendments made to the Specification in order to move the three paragraphs from the "Art Related to the Invention" section to the "Detailed Description of the Invention" section are appropriate.

Also, the Specification has been amended to add the wording of Claim 10 to the section entitled "Summary of the Invention".

None of the amendments made herein have added new matter and it is respectfully submitted that such are appropriate.

Claim 10 Rejection

Claim 10 had been objected to under 35 USC 112, second paragraph, and rejected as being anticipated by the Prior Art section at page 3, lines 3-14 and based on the reference Iue. Claim 10 has been cancelled herein.

Claims 11 and 12 have been added herein and recite a method for creating a three-dimensional image from a two-dimensional image based on wearing a pair of eyeglasses wherein the lenses can darken or lighten in synchronized manner with movement of foregoing objects that are in the moving pictures.

It is submitted that such is not taught in Iue because Iue teaches changing images in front of the viewer. This differs in the fact that the present Invention darkens or lightens the lenses of the eyeglasses based on movement of the objects in the foreground of the moving pictures. Respectfully, Claims 11 and 12 are patentable over Iue.

Conclusion

In light of the indication that Claims 1-9 are patentable and Applicant's position that Claims 11 and 12 are patentable, it is respectfully submitted that the Application is in condition for allowance and such action is respectfully requested.

Should any extensions of time or fees be necessary in order to maintain this Application in pending condition, appropriate requests are hereby made and authorization is given to debit account #02-2275.

Respectfully submitted,

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DCL/mr

Encl: Executed Declaration of Mr. Jacobs
Return receipt post-card